fall. * * * Equity will always protect the rights of a cestui que trust." 2 MORAWETZ, CORP., 1031.

There would seem to be no persuasive reason why, in a court of equity, the property of a dissolved eleemosynary corporation might not also be administered without regard to the strict legal title. The property of a charitable corporation is, by the very definition of the corporation (*Dartmouth College* v. *Woodward*, 4 Wheat., 518, *McDonald* v. *Mass. Gen'l Hosp., supra*), in the nature of a charitable trust, and it would seem that the rules of charitable trusts should apply. This view would seem to be borne out by the common law rule relative to the visitation of eleemosynary corporations see 2 KYD, CORP., 181ff. In accordance with this view are the rules stated, and the cases in their support in 6 CYC., 974-977. But several cases in this country have held to the common law rule or modifications of the same.

In *Mott.* v. *Danville Seminary, supra,* the land of a dissolved institution of learning reverted absolutely, the court holding that the doctrine of reverter applied, even in the view of the court of equity. See also same case, 136 Ill. 403, 28 N. E. 54.

In *Late Corporations* v. *U. S., supra,* where, in one view of the case at least, land reverted, on the dissolution of a charitable corporation, to the United States as its grantor, the property was disposed of under the equitable doctrine of *cy pres.*

In *People* v. *Trustees,* 36 Cal. 166, the common law doctrine was held not to apply in the case of the dissolution of a corporation organized for literary purposes, to land acquired by purchase, there being no stockholders, and creditors being provided for. By *dictum* in the case the common law rule was held to apply to land donated to the corporation.

In *Acklin* v. *Paschal,* 48 Tex. 147, lands reverted from a dissolved educational corporation institute, in accordance with the rule laid down by KENT, *supra,* as the common law rule, the court holding that if there had been creditors, which there were not, the lands would have been subject to the claims of such, or of other grounds of defense established by the parties defendant.

The facts are not clear, but it is difficult to understand how, in the case under discussion, the South Carolina Court held that the realty in question reverted to representatives of members of the corporation. There are cases holding to the opposite. See 6 CYC., p. 977, and cases cited in note.

W. W. M.

CROSSED CHECKS IN ENGLAND, AND AN AMERICAN ANALOGY.—The practice of crossing checks, that is, of stamping or writing across the face of the check some direction as to its payment, was in vogue among the English merchants and bankers earlier than 1850. It was said in *Bellamy* v. *Marjoribanks,* 7 Exch. 389, to originate in the clearing house. The clerks of the different bankers were accustomed to write across the checks the names of their employers in order to enable the clearing house clerks to make up the accounts. It is obvious that this was not intended to produce any other effect on the check than to enable the clearing house clerks to trace the banker from whom it came. It had nothing to do with the negotiability of

the instrument as, at the time when the crossing was done, the checks were in the course of payment or presentation for payment, and all their negotiability was at an end. It afterwards became a common practice among the English merchants and bankers to cross checks, which were not intended to go through the clearing house at all, with the name of the banker or with the words "& Co." A check is generally crossed by writing the words "and company" between two parallel transverse lines, or by simply drawing two parallel transverse lines across the check.

It was held in *Bellamy* v. *Marjoribanks,* 7 Exch. 389 and *Carlon* v. *Ireland,* 5 El. & Bl. 765, that the negotiability of a check was not in any way affected by crossing. In *Carlon* v. *Ireland,* an action was brought for the conversion of a crossed check against a person who had cashed it for the clerk of the plaintiff, the payee of the check, the clerk being intrusted with it to hand to the bankers of the plaintiff, and the court held that the proper question for the jury was, whether the defendant took the check *bona fide* and for value. In other words it was held that an individual who received a crossed check *bona fide* and gave value for it, was entitled to retain the amount received through his bankers from the bankers on whom it was drawn.

The crossing of a check was made for the protection and safeguard of the true owner in case payment is made to a wrong person. When a check is crossed, bankers generally refuse to pay it to any one except a banker. If they pay it to a person other than a banker, they pay it at their peril in case the person to whom payment is made is not entitled to receive it. The object of the crossing is to secure the payment to a banker so that it may be easily traced for whose use the money is received. Suppose A, a customer of B bank draws and crosses a check intending to pay it to C to whom he is indebted, and before handing it over to C it is stolen from him. If the check, so stolen, is not presented through a banker, according to usage it would not be paid. If the banker disregards the custom and pays the check to a private individual, he would not be able to charge his customer with the payment, if the person actually presenting it is not the lawful holder of the check. As a rule in England no prudent banker will pay a crossed check otherwise than to a banker unless he is fully satisfied as to the title of the party presenting it to receive payment.

The first statute recognizing crossings is the 19 & 20 Vict. c. 25. Before the statute it was said according to the cases that the effect of crossing a check with the name of a banker was only a caution or warning to the drawees that care must be used in paying it to a person other than the banker. DANIEL, NEG. INST., 1585a. It did not limit the authority of the drawee to paying the party or firm whose name was written across it. However, if he paid it to another person, that circumstance would be strong evidence of negligence in an action against him. *Stewart* v. *Lee,* 1 Moo. & M. 101 (22 E. C. L.) The statute was passed for the purpose of enabling the drawers or holders of a check effectually to direct the payment of the same only to or through some banker. In 1857 the question whether the crossing formed an integral part of the check came before the court, and it was decided that it did not. *Simmons* v. *Taylor,* 2 C. B. (N. S.) 528, 4 C. B.

(N. S.) 463, 27 L. J. C. P. 45, 248. The facts in that case are as follows: P drew upon the London Joint Stock Bank a check for £126, payable to "George Master, Esq.," crossed it in the usual way by writing across it "& Co." between two parallel lines, and enclosed the check so crossed in an envelope addressed to George Master. Through incorrect address it never reached Master. A stranger presented it to the bank for payment, and it was paid as an ordinary check, there being then nothing upon the face of it to indicate that it was a crossed check, the lines and the words "& Co." having been obliterated from it so as to leave no trace. The court held that the statute, 19 & 20 Vict. c. 25, which made a crossed check "payable only to or through a banker," applied to the state of the instrument at the time of its presentment; and therefore the banker upon whom a check was drawn was justified in paying otherwise than through a banker, if, when presented, it did not bear any crossing on its face. It was held that the crossing formed no part of the check itself, and consequently its erasure did not amount to a forgery. Then the statute, 21 & 22 Vict. c. 79, was enacted in order to make crossing a material part of the check. It provides against obliteration of the crossing. In 1875 it was decided in *Smith* v. *Union Bank,* 1 Q. B. D. 31, that these statutes confirming the usage of crossing checks did not at all interfere with their negotiability. In that case a check payable to bearer, and crossed to the London and County Bank was stolen. It came into the hands of a holder in due course, who obtained payment through the London and Westminster Bank, notwithstanding the crossing. The court held that the true owner had no remedy against the paying bankers, because the negotiability of the check was not affected by crossing. To meet this difficulty the Crossed Check Act, 39 & 40 Vict. c. 81, was passed in 1876. It gave a remedy to the true owner of the crossed check if it was paid contrary to the crossing. It also repealed the previous statutes. The subject of crossed checks is now regulated by sections 76 to 81 of the Bills of Exchange Act of 1882, which repeals the Act of 1876, but substantially reproduces its provisions.

In this country the bank should not pay the check drawn upon it except to the actual payee, or to his order; and if it mistakes the payee's identity when the check is unindorsed, it is responsible. *Dodge* v. *National Exchange Bank,* 30 Ohio St. 1; *Risley* v. *Phoenix Bank,* 11 Hun 484; *Shipman* v. *Bank of the State of New York,* 126 N. Y. 318, 27 N. E. 371, 22 Am. St. Rep. 821; DANIEL, NEG. INST. § 1618. In England the bank is not liable for mistaking the payee's identity. It is protected by the 19th section of the 16 & 17 Vict. c. 59 which provides "that any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof." The protection which the law in this country gives to the real owner of the check is secured in England by crossing the check. Under

the statute, 16 & 17 Vict. c. 59, § 19, a banker is not liable for paying on a forged instrument, but if the check is crossed, the payee can recover from the bank if his signature is forged notwithstanding this statute. The bank can debit the drawer's account with the amount of the check which it pays although the payee's indorsement is forged, but he cannot do so if the check is crossed, and the bank pays it in contravention of the crossing. CHALMER'S BILLS OF EXCHANGE, Ed. 5, p. 209, § 60.

The practice of crossing checks does not exist in this country. It is interesting to note the case of *Commercial National Bank of Charlotte* v. *First National Bank of Gastonia,* 118 N. C. 783, because it decided a question which bears some resemblance to the usage of crossing checks. In that case D in order to prevent his business rival, Gastonia Banking Co., from ascertaining the extent of his business, stamped the following words on his check: "This check positively will not be paid to the Gastonia Cotton Manufacturing Co., the Gastonia Banking Co., or any of their agents." The court held that such restriction was valid and binding on the holder. In both this case and the case of crossed checks the mode of payment is restricted, but they differ in that a crossed check is made payable only to or through some banker, while the principle announced in this case enables the drawer of a check to prevent certain persons from receiving payment of his check. If a person is allowed to forbid payment of his check to a certain person, it seems very logical that he should also be permitted to make his check payable only to or through some quarter of known respectability and credit as in the case of a crossed check. To the writer's knowledge no such case has been found in this country. However, it will be noticed that the object sought to be attained in *Commercial National Bank of Charlotte* v. *First National Bank of Gastonia, supra,* is entirely different from that of crossing a check.

A. Z. S.